IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 57/2006
AND
CIVIL APPLICATION NO. 210/2006

1. Silvestre De Souza,
2. Carmelina Perpetuo Succoro Vaz
   De Souza,
3. Joseph de Souza,
4. Rosy De Souza,

   Appellants 3 and 4 through their
   Constituted Attorney Carmelina
   De Souza the appellant No.2
   All residing at Manxe Bhat,
   Talaulim, Ilhas, Goa. ..... Appellants.

V/s.

1. Ventura De Souza (deceased)
2. Felicidade De Souza,

   Both residing at Xirer, Near Azami
   School, P.O. Neura, Ilhas, Goa.

3. Emilio Francisco De Souza (deceased)
4. Paulina De Souza,
   Both residing c/o. Arxeth Afonso,
   Near St. Mathew's Church, P.O. Neura,
   Azossim, Ilhas, Goa.
5. Perpetua Soccorro Albuquerque
6. Marcelino Albuquerque,
   Both residing at Building No.3,
   Firguem Bhat, Merces, Ilhas, Goa. ..... Respondents.

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the appellants.

Mr. R. G. Ramani, Advocate for respondent No.2.

CORAM : P.V. KAKADE, J.

DATE : 20TH NOVEMBER, 2006.

ORAL JUDGMENT :

Heard learned Counsel for both the parties. Rule. Rule made returnable forthwith.

2. The present appellants have preferred this appeal against the order passed by the Civil Judge, Sr. Division, Panaji, dismissing the application at Exhibit – 21 to appoint him as Head of the Family and appointing the respondent, who is the widow of the son of the deceased, as head of the family in Inventory Proceeding No.47/2001.

3. In the course of arguments and on perusing the order passed by the lower Court, it appears that the legal position that under Article 2068 the Administrator has to be appointed as per the provision made therein taking into account the existence of surviving sons of the deceased. In the present case, what appears to have been done is that the claim of the surviving son is discarded, without giving any reasons or without considering the evidential aspect while appointing the widow of another son. In my view, it is clearly in contravention of Article 2068 of

the Family Laws of Goa, Daman and Diu. Hence, we have no option but to remand the matter for fresh adjudication with time limit.

4. Hence, the rule is made absolute. The impugned order passed by the trial Court in Inventory Proceeding No.47/2001 is set aside. The appeal is allowed. The Inventory Court is directed to adjudicate the application at Exhibit-21 filed by the present appellant afresh on the basis of the available evidence vis-a-vis the provision of Article 2068 of the Family Laws, after giving opportunity to both the sides to lead their evidence. The inventory application to be adjudicated on merits within three months from the date of receipt of writ of this Court. With this direction, the appeal as well as the civil application are disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.